

Message Text

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ORIGIN L-02

INFO OCT-01 ARA-06 EUR-12 ISO-00 SNM-02 DEAE-00 SCA-01

JUSE-00 RSC-01 /025 R

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ARA/CAR - G. HIGH

S/NM - N. WARNER

EUR/WE - E. BEIGEL

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P 101613Z DEC 74

FM SECSTATE WASHDC

TO AMEMBASSY PARIS PRIORITY

AMCONSUL MARTINIQUE

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E.O. 11652: N/A

TAGS:CPRS, PFOR, SNAR, FR, MB

SUBJECT: EXTRADITION -- BETTANCOURT, NEWBALL, GOMEZ

REF: (A) PARIS 29223; (B) MARTINIQUE 426

1. MANY THANKS REFTEL. DEPARTMENT AGREES THAT 40 DAY TIME LIMIT COMMENCES DAY OF ACTUAL PROVISIONAL ARREST FOLLOWING REQUEST FOR PROVISIONAL ARREST AND EXTRADITION PURSUANT TO ARTICLE IV OF TREATY. DEPARTMENT DISAGREES, HOWEVER, WITH GOF INTERPRETATION OF TREATY (DESCRIBED REFTEL A) THAT FACT SUBJECT TECHNICALLY ARRESTED ON LOCAL CHARGES DOES NOT ALTER 40 DAY TIME LIMITATION. IF GOF INTERPRETATION WERE FOLLOWED, IT WOULD NECESSITATE FAR BETTER CO-ORDINATION AND FAR MORE INQUIRY BETWEEN USG AND GOF THAN PRESENTLY EXISTS (AND, FOR THAT MATTER, FAR MORE THAN IS NEEDED).

2. IF GOF INTERPRETATION FOLLOWED, DEPARTMENT WOULD NEVER BE ABLE TO REQUEST PROVISIONAL ARREST UNTIL ALL LOCAL PROCEEDINGS (AND SENTENCE) WERE CONCLUDED. THUS, BEFORE ANY REQUEST COULD BE MADE, INQUIRY WOULD HAVE TO BE MADE AS TO LIMITED OFFICIAL USE

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WHETHER THERE WERE ANY LOCAL CHARGES PENDING AGAINST FUGI-

TIVE. IT IS TRUE THAT THIS INFORMATION IS FORTHCOMING ANYWAY, BUT UNDER THE GOF INTERPRETATION, INQUIRY WOULD HAVE TO BE MADE BEFORE REQUEST IS MADE. OFTEN THERE IS NOT ENOUGH TIME TO WAIT FOR COMPLETION OF SUCH AN INQUIRY BEFORE REQUESTING ARREST. UNDER GOF INTERPRETATION, NOTE REQUESTING PROVISIONAL ARREST AND EXTRADITION WOULD HAVE TO BE

HELD BY EMBASSY UNTIL EMBASSY IS NOTIFIED BY GOF THAT SUBJECT HELD ON LOCAL CHARGES IS TO BE RELEASED WITHIN NEXT 40 DAYS. ANY REQUEST MADE IN HASTE OR ANY FAILURE TO NOTIFY COULD CAUSE LOSS OF FUGITIVE.

3. DEPARTMENT'S INTERPRETATION OF TREATY IS THAT PROVISIONAL ARREST, PURSUANT TO TREATY, SHOULD BE OPERATIVE ONLY WHEN LOCAL CHARGES ARE DROPPED OR COMPLETED AND IT IS ONLY BASIS FOR CUSTODY.

4. IN INSTANT CASE, IT IS TRUE THAT USG HAD REQUESTED PROVISIONAL ARREST PURSUANT TO TREATY AND, BECAUSE PROCUREUR DID NOT ACCEPT FORM OF REQUEST, SHE HAD SUBJECTS ARRESTED ON LOCAL CHARGES -- LOCAL CHARGES STEMMING FROM VIOLATION OF LOCAL LAW. SUBJECTS ALLEGEDLY DID VIOLATE LOCAL LAW AND WERE, IN FACT, ARRESTED PURSUANT TO LOCAL LAW, NOT PURSUANT TO THE TREATY. TO PROCLAIM AT THIS POINT THAT SUBJECTS WERE ACTUALLY ARRESTED PURSUANT TO TREATY IS NOT CONSISTANT WITH THE FACTS.

5. IT IS ALSO TRUE, IN INSTANT CASE, THAT SUBJECTS COULD HAVE BEEN ARRESTED PURSUANT TO THE TREATY ON THE BASIS OF THE FACTS GIVEN TO PROCUREUR. IF PROCUREUR HAD CHOSEN TO PROVISIONALLY ARREST THEM PURSUANT TO TREATY AT THAT TIME, SAID ARREST WOULD HAVE BEEN PROPER AND TIME LIMITATION WOULD HAVE COMMENCED AT THAT TIME. FACT IS, HOWEVER, PROCUREUR CHOSE NOT TO PROVISIONALLY ARREST SUBJECTS (EVEN THOUGH MFA APPARENTLY HAD INSTRUCTED HER TO DO SO), BUT TO ARREST THEM ON LOCAL CHARGES. THEREFORE, TIME LIMIT DID NOT START AT THAT TIME. TIME LIMIT SHOULD START TO RUN AT MOMENT PROCUREUR DISMISSES LOCAL CHARGES AND SUPPLANTS THEM WITH THE PROVISIONAL ARREST PURSUANT TO TREATY. PROCUREUR APPARENTLY UNDERSTANDS IT THIS WAY, AS REFTEL B REPORTS LIMITED OFFICIAL USE

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THAT SHE IS PLANNING TO HAVE THEM FORMALLY PROVISIONALLY ARRESTED PURSUANT TO TREATY SOME TIME THIS WEEK. PLEASE ASK GOF FOR CLARIFICATION ON ABOVE-MENTIONED POINTS, AND ADVISE THEM OF USG VIEW. PLEASE ADVISE SOONEST.

6. DEPARTMENT WILL ATTEMPT TO HAVE DOCUMENTS TO PARIS ASAP. IF DECEMBER 27 IS MAINTAINED BY GOF VIEW TO BE DEADLINE; EMBASSY SHOULD ASK APPROPRIATE GOF AUTHORITIES IF

DEPARTMENT COULD SEND AUTHENTICATED, BUT UNTRANSLATED DOCUMENTS TO EMBASSY TO BE FORMALLY PRESENTED TO MFA WITH PRO VISO THAT EMBASSY WOULD ARRANGE FOR TRANSLATION IN PARIS. IF GOF AGREES TO THIS PROCEDURE, TIME LIMITATION WOULD BE TOLLED AS OF TIME UNTRANSLATED DOCUMENTS PRESENTED TO MFA. (FYI - OTHER COUNTRIES HAVE ALLOWED THIS PROCEDURE IN SIMILAR EMERGENCIES. END FYI). PLEASE ADVISE SOONEST WHETHER THIS PROCEDURE WOULD BE ACCEPTABLE TO GOF AUTHORITIES.

7. DEPARTMENT GRATIFIED THAT GOF VIEW IS THAT TIME LIMIT WILL BE TOLLED AS OF TIME DOCUMENTS ARE PRESENTED TO MFA, PARIS. PLEASE REQUEST APPROPRIATE GOF AUTHORITIES TO ADVISE PROCUREUR OF THIS FACT SO THAT FUGITIVES WILL NOT BE RELEASED IF DOCUMENTS HAVE NOT REACHED MARTINIQUE BY 27TH.

8. DEPARTMENT HAS JUST BEEN ADVISED BY JUSTICE THAT DOCUMENTS WILL BE HERE BY TUESDAY (DECEMBER 10, 1974). IF TRANSLATIONS CAN BE COMPLETED BY FRIDAY DECEMBER 13, DEPARTMENT WILL HAVE IT DONE HERE; IF IT WILL TAKE LONGER, SUGGEST EMBASSY ARRANGE FOR TRANSLATION PER PARA 6 ABOVE.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: EXTRADITION, ARRESTS
Control Number: n/a
Copy: SINGLE
Draft Date: 10 DEC 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: CunninFX
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974STATE270274
Document Source: CORE
Document Unique ID: 00
Drafter: CLBLAKESLEY:AD
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D740358-0419
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19741246/aaaabnnf.tel
Line Count: 138
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN L
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: (A) PARIS 29223; (B) MARTINIQUE 426
Review Action: RELEASED, APPROVED
Review Authority: CunninFX
Review Comment: n/a
Review Content Flags:
Review Date: 02 MAY 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <02 MAY 2002 by elyme>; APPROVED <25 MAR 2003 by CunninFX>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: EXTRADITION -- BETTANCOURT, NEWBALL, GOMEZ
TAGS: CPRS, PFOR, SNAR, FR, MB, (BETTANCOURT), (NEWBALL), (GOMEZ)
To: PARIS MARTINIQUE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005